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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

MARQUES PHILLIPS and CYNTHIA M. PHILLIPS,)	CASE NO. CIV.S-04-0377 FCD PAN
)	
Plaintiffs,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF
vs.)	MOTION TO COMPEL DISCOVERY
)	
CITY OF FAIRFIELD, CHIEF OF)	
POLICE WILLIAM GRESHAM,)	
OFFICER MARK SCHRAER, OFFICER)	
CHAD TIGERT, OFFICER STEVE)	
TROJANOWSKI, JR., OFFICER MIKE)	
BEATTY, OFFICER MATTHEW)	
THOMAS, OFFICER STEPHEN RUIZ,)	
OFFICER TROY OVIATT, OFFICER)	
JEREMY NIPPER, OFFICER FRANCO)	
CESAR, OFFICER CADE BECKWITH,)	
and DOES 1 through 13,)	
)	
Defendants.)	

I. FACTS

Last year, Plaintiff Marques Phillips served Defendants William Gresham, Mark Schraer, Chad Tigert, and Steve Trojanowski, Jr., with Plaintiff's First Set of Interrogatories to Defendant Police Chief William Gresham, Plaintiff's First Set of

1 Interrogatories to Defendant Mark Schraer, Plaintiff's First Set of Interrogatories to
2 Defendant Chad Tigert, Plaintiff's First Set of Interrogatories to Defendant Steve
3 Trojanowski, Jr., and Plaintiff's First Set of Request for Admissions to Defendant Steve
4 Trojanowski, Jr.. Mr. Gresham, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski responded
5 to the discovery requests. However, their responses consisted primarily of objections,
6 incomplete answers, and denials.
7

8 On August 9, 2005, I met and conferred with the Defendants' attorney, Kimberly
9 Colwell, Esq., in an effort to obtain full and complete responses. Ms. Colwell said that
10 she would provide me with some additional responses. On August 31, 2005, I notified
11 Ms. Colwell that I was not in receipt of the additional responses. I also notified Ms.
12 Colwell that I was preparing this motion.
13

14 On September 7, 2005, I received the additional responses. Unfortunately, many
15 of the additional responses were also incomplete. I would like to continue to meet and
16 confer with Ms. Colwell about the responses. However, continuing to meet and confer
17 with Ms. Colwell is not a viable option at this point, because discovery is almost closed;
18 Ms. Colwell took almost 30 days to provide me with the last set of additional responses;
19 and many of those additional responses were incomplete.
20

21 II. DISCUSSION

22 A. Mr. Phillips and Mrs. Phillips' Motion to Compel Complies With Rule 37.

23 Under Federal Rule of Civil Procedure 37(a), "[a] party, upon reasonable notice to
24 other parties and all persons affected thereby, may apply for an order compelling ...
25 discovery ..."

1 Here, I notified Ms. Colwell that I was preparing this motion on August 31, 2005.
2 I did not file this motion until seven days later. Therefore, Mr. Phillips and Mrs. Phillips'
3 motion complies with Rule 37(a).

4 B. The Court Should Compel Mr. Gresham to Respond Fully and Completely to the
5 Following Interrogatories.

6 Under Rule 26(b)(1), “[p]arties may obtain discovery regarding any matter, not
7 privileged, that is relevant to the claim or defense of any party ...”

8 1. Interrogatory 6

9 This interrogatory asks:

10
11 Were you ever a defendant in any suit which charged you or any of
12 your police officers, individually or in your or their official capacity as
13 police officers or the Chief of Police in the Fairfield Police Department or
14 any other law enforcement agency, with abuse of your lawful authority, use
of excessive force, misuse of firearms or equipment, racism, prejudice,
fabricated probable cause, dishonesty, perjury, false arrest and/or detention
or any other civil rights violation ...

15 This discovery is not privileged and is relevant to Mr. Phillips and Mrs. Phillips’ claim(s)
16 of negligent selection, training, and retention.

17
18 However, Mr. Gresham failed to respond, because he voluntarily limited his
19 response to the time period of January 1, 1999, to March 18, 2005. The Court should
20 compel Mr. Gresham to respond fully and completely to this interrogatory.

21 2. Interrogatory 7

22 This interrogatory states, “[i]f you were ever enjoined from engaging in any
23 conduct by a state or federal court decree, identify the court, title and docket number of
24 the case, date of the decree and nature of the conduct enjoined.” This discovery is not
25

1 privileged and is relevant to Mr. Phillips and Mrs. Phillips' claim(s) of negligent
2 selection, training, and retention.

3 However, Mr. Gresham failed to respond, because he voluntarily limited his
4 response to the time period of January 1, 1999, to March 18, 2005. The Court should
5 compel Mr. Gresham to respond fully and completely to this interrogatory.

6
7 3. Interrogatory 8

8 This interrogatory asks:

9 Were there in existence at the time of the 'incident' internal
10 administrative procedures or training designed to prevent and correct
11 instances of abuse of authority, use of excessive force, racism, prejudice,
12 fabricated probable cause, dishonesty, perjury, false arrest and/or detention
or any other violation of civil rights for both the police officers and the
Chief of Police for the Fairfield Police Department ...

13 This discovery is not privileged and is relevant to Mr. Phillips and Mrs. Phillips' claim(s)
14 of negligent training, retention, investigation, and discipline.

15 However, Mr. Gresham failed to respond, because he failed to state the name of
16 the person who was responsible for implementing said procedures or training as
17 requested. Mr. Gresham's statement that he is "the ultimate policy maker" does not tell
18 the Plaintiffs' who was responsible for implementing said procedures or training. Mr.
19 Gresham's statement only tells the Plaintiffs what they already knew: The buck stopped
20 at Mr. Gresham, because he was the chief of police. The Court should compel Mr.
21 Gresham to respond fully and completely to this interrogatory.
22
23
24
25

1 4. Interrogatory 9

2 Interrogatory 9 asks, “[a]t the time of the incident what information did you have
3 or have knowledge of with respect to the activities of Marques Phillips that led to the
4 ‘incident.’” This discovery is not privileged and is relevant to Mr. Phillips and Mrs.
5 Phillips’ claim(s) of unreasonable search and seizure and false arrest and imprisonment.
6

7 However, Mr. Gresham chose not to respond, because he “did not participate in
8 the incident.” This interrogatory did not ask Mr. Gresham whether he directly
9 participated in the incident. This interrogatory asked Mr. Gresham what information he
10 had regarding Mr. Phillips’ activities that led to the incident. The Court should compel
11 Mr. Gresham to respond fully and completely to this interrogatory.
12

13 5. Interrogatory 10

14 Interrogatory 10, a continuation of Interrogatory 9, asks, “[f]or information that
15 was not obtained directly by you, who provided you the information about Marques
16 Phillips? What information did that individual(s) rely on, such as documents or oral
17 communications via radio or phone or in some other manner. Identify the source of
18 information and its location or document name.” This discovery is not privileged and is
19 relevant to Mr. Phillips and Mrs. Phillips’ claim(s) of unreasonable search and seizure
20 and false arrest and imprisonment.
21

22 However, Mr. Gresham chose not to respond again, because he “did not
23 participate in the incident.” This interrogatory did not ask Mr. Gresham whether he
24 directly participated in the incident. This interrogatory asked Mr. Gresham to state the
25 person(s) who provided him with information about Mr. Phillips and where the person(s)

1 who provided him with information about Mr. Phillips obtained the information. The
2 Court should compel Mr. Gresham to respond fully and completely to this interrogatory.

3 6. Interrogatory 11

4 This interrogatory asks:

5 Where did your officers get the information leading them to believe
6 that Marques Phillips was engaged in the illegal possession or sale of
7 marijuana? Name any documents or the identity of any individual that you
8 relied on or communicated with about Marques Phillips and alleged
9 criminal activity. Name any and all individuals who communicated this
10 information to you and any source of information/document relied on.

11 This discovery is not privileged and is relevant to Mr. Phillips and Mrs. Phillips' claim(s)
12 of unreasonable search and seizure and false arrest and imprisonment.

13 However, Mr. Gresham chose not respond, yet again, because he was "not
14 involved in the incident." This interrogatory, like the interrogatories before it, did not ask
15 Mr. Gresham whether he was directly involved in the incident. This interrogatory asked
16 Chief of Police Gresham where his police officers obtained the information that led them
17 to believe that Marques Phillips was engaged in the illegal possession or sale of
18 marijuana. The Court should compel Mr. Gresham to respond fully and completely to
19 this interrogatory.

20 7. Interrogatory 17

21 Interrogatory 16 reads, "[s]tate specifically and in detail the date and exact
22 sequence of events as you know them that took place during any interactions between
23 your police officers and Marques Phillips and Cynthia Phillips on February 1, 2003."

24 Interrogatory 17, a continuation of Interrogatory 16, states:
25

1 For each incident identified in response to interrogatory number 16,
2 state: (a) the name, badge or identification number, and present address of
3 any other person involved in or known by you to have witnessed the
4 interaction; (b) the date, substance, and person involved in any conversation
5 or oral report about any such incident; (c) the identity of any forms or
6 documents created in preparation for or response to any such interactions;
7 (e) any ordinance, rule, or policy authorizing or tending to authorize or
8 ratify any actions you or your officers took with regard to Marques Phillips
9 ...

10 This discovery is not privileged and is relevant to all of Mr. Phillips and Mrs. Phillips'
11 claim(s).

12 However, Mr. Gresham failed to respond, because he failed to state all of the
13 police officers and witnesses who were present at Mr. Phillips' arrests on February 1,
14 2003, as requested. Mr. Gresham referred the Plaintiffs' to the police report. However,
15 the police report does not state all of the police officers and witnesses who were present.
16 For example, the police report does not state that police officer Franco Cesar was present,
17 even though it has been established through discovery that he was.

18 Mr. Gresham also failed to respond, because he failed to state all of the police
19 officers who were involved in conversations or oral reports about Mr. Phillips' arrest as
20 requested. Mr. Gresham referred the Plaintiffs' to the police report for the information.
21 However, the police report does not state all of the police officers who were involved in
22 conversations or oral reports about Mr. Phillips' arrest. For example, the police report
23 does not state that police officer Franco Cesar gave oral statements about Mr. Phillips'
24 arrest during the internal affairs investigation of Mr. Phillips' arrest, even though it has
25 been established through discovery that he did.

1
2 8. Interrogatory 19

3 This interrogatory states, “[i]dentify all individuals, documents, tapes,
4 memoranda, notes, or other documents or sources of information however recorded that
5 dealt with the investigation of the incident between your police officers and Marques and
6 Cynthia Phillips.” This discovery is not privileged and is relevant to all of Mr. Phillips
7 and Mrs. Phillips’ claim(s).
8

9 However, Mr. Gresham failed to respond, because he failed to state all of the
10 sources of information about Mr. Phillips’ arrest as requested. Mr. Gresham claimed
11 attorney client privilege and work product privilege as justification for his failure.
12 However, Mr. Gresham failed to state the general nature of the sources of information
13 and why they are subject to said privileges as required. The Court should compel Mr.
14 Gresham to respond fully and completely to this interrogatory.
15

16 9. Interrogatory 21

17 This interrogatory asks, “[h]ave you ever been arrested and/or convicted of any
18 crime whatsoever...” This discovery is not privileged and is relevant to the Plaintiffs’
19 claim(s) of negligent selection, training, and retention.
20

21 However, Mr. Gresham failed to respond, because he voluntarily limited his
22 response to the time period of January 1, 1999, to March 18, 2005. The Court should
23 compel Mr. Gresham to fully and completely respond to this interrogatory.
24
25

1 C. The Court Should Compel Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to
2 Respond Fully and Completely to the Following Interrogatories.

3 Under Federal Rule of Civil Procedure 26(b)(1), “[p]arties may obtain discovery
4 regarding any matter, not privileged, that is relevant to the claim or defense of any party
5 ...”

6 1. Interrogatory 6

7 This interrogatory asks:
8

9 Were you ever a defendant in any suit which charged you,
10 individually or in your official capacity as a police officer for the Fairfield
11 Police Department or any other law enforcement agency, with abuse of
12 your lawful authority, use of excessive force, misuse of firearms or
equipment, racism, prejudice, fabricated probable cause, dishonesty,
perjury, false arrest and/or detention or any other civil rights violation ...

13 This discovery is not privileged and is relevant to Mr. Phillips and Mrs. Phillips’ claim(s)
14 of negligent selection, training, and retention.

15 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
16 they voluntarily limited their responses to the time period of January 1, 1999, to March
17 18, 2005. The Court should compel Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to
18 respond fully and completely to this interrogatory.
19

20 2. Interrogatory 7

21 This interrogatory states, “[i]f you were ever enjoined from engaging in any
22 conduct by a state or federal court decree, identify the court, title and docket number of
23 the case, date of the decree and nature of the conduct enjoined.” This discovery is not
24
25

1 privileged and is relevant to Mr. Phillips and Mrs. Phillips' claim(s) of negligent
2 selection, training, and retention.

3 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
4 they voluntarily limited their responses to the time period of January 1, 1999, to March
5 18, 2005. The Court should compel Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to
6 respond fully and completely to this interrogatory.
7

8 3. Interrogatory 8

9 This interrogatory asks:

10 Were there in existence at the time of the 'incident' internal
11 administrative procedures or training designed to prevent and correct
12 instances of abuse of authority, use of excessive force, racism, prejudice,
13 fabricated probable cause, dishonesty, perjury, false arrest and/or detention
or any other violation of civil rights for police officers of the Fairfield
Police Department ...

14 This discovery is not privileged and is relevant to Mr. Phillips and Mrs. Phillips' claim(s)
15 of negligent training, retention, investigation, and discipline.
16

17 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
18 they failed to state the name of the person who was responsible for implementing said
19 procedures or training as requested. The Court should compel Mr. Schraer, Mr. Tigert,
20 and Mr. Trojanowski to respond fully and completely to this interrogatory.

21 4. Interrogatory 10

22 Interrogatory 9 asks, "[a]t the time of the incident what information did you have
23 or have knowledge of with respect to the activities of Marques Phillips that led to the
24 'incident.'" Interrogatory 10, a continuation of Interrogatory 9, asks, "[f]or information
25

1 that was not obtained directly by you, who provided you the information about Marques
2 Phillips? What information did that individual(s) rely on, such as documents or oral
3 communications via radio or phone or in some other manner. Identify the source of
4 information and its location or document name.” This discovery is not privileged and is
5 relevant to Mr. Phillips and Mrs. Phillips’ claim(s) of unreasonable search and seizure
6 and false arrest and imprisonment.
7

8 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
9 they failed to state the person(s) who provided them with information about Mr. Phillips
10 as requested. Mr. Schraer, Mr. Tigert, and Mr. Trojanowski also failed to respond,
11 because they failed to state where the person(s) who provided them with information
12 about Mr. Phillips obtained the information, also as requested. The Court should compel
13 Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to respond fully and completely to this
14 interrogatory.
15

16 5. Interrogatory 11

17 This interrogatory asks:

18 Where did you get the information leading you to believe that
19 Marques Phillips was engaged in the illegal possession or sale of
20 marijuana? Name any documents or the identity of any individual that you
21 relied on or communicated with about Marques Phillips and alleged
22 criminal activity. Name any and all individuals who communicated this
23 information to you and any source of information/document relied on.
24

25 This discovery is not privileged and is relevant to Mr. Phillips and Mrs. Phillips’ claim(s)
of unreasonable search and seizure and false arrest and imprisonment.

1 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to state where they
 2 obtained information that led them to believe that Mr. Phillips was engaged in the illegal
 3 possession or sale of marijuana, the person(s) they obtained said information from, and
 4 where the person(s) they obtained said information from obtained said information. The
 5 Court should compel Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to respond fully and
 6 completely to this interrogatory.

7
 8 6. Interrogatory 17

9 Interrogatory 16 reads, “[s]tate specifically and in detail the date and exact
 10 sequence of events as you know them that took place during any interactions between
 11 you, the other police officers, and Marques Phillips on February 1, 2003. Interrogatory
 12 17, a continuation of Interrogatory 16, states:

13
 14 For each incident identified in response to interrogatory number 16,
 15 state: (a) the name, badge or identification number, and present address of
 16 any other person involved in or known by you to have witnessed the
 17 interaction; (b) the date, substance, and person involved in any conversation
 18 or oral report about any such incident; (c) the identity of any forms or
 19 documents created in preparation for or response to any such interactions;
 20 (d) the garments you were wearing at the time of each interaction; (e) the
 exact amount, types, and times that you ingested alcoholic beverages on the
 day of any such interactions; (f) any ordinance, rule, or policy authorizing
 or tending to authorize or ratify any actions you took with regard to
 Marques Phillips ...

21 This discovery is not privileged and is relevant to all of Mr. Phillips and Mrs. Phillips’
 22 claim(s).

23 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
 24 they failed to state all of the police officers and witnesses who were present at Mr.
 25 Phillips’ arrest as requested. Mr. Schraer, Mr. Tigert, and Mr. Trojanowski referred the

1 Plaintiffs' to the police report. However, the police report does not state all of the police
2 officers and witnesses who were present. For example, the police report does not state
3 that police officer Franco Cesar was present, even though it has been established through
4 discovery that he was.

5 Mr. Schraer, Mr. Tigert, and Mr. Trojanowski also failed to respond, because they
6 failed to state all of the police officers who were involved in conversations or oral reports
7 about Mr. Phillips' arrest as requested. Mr. Schraer, Mr. Tigert, and Mr. Trojanowski
8 referred the Plaintiffs' to the police report for the information. However, the police
9 report does not state all of the police officers who were involved in conversations or oral
10 reports about Mr. Phillips' arrest. For example, the police report does not state that
11 police officer Franco Cesar gave oral statements about Mr. Phillips' arrest during the
12 internal affairs investigation of Mr. Phillips' arrest, even though it has been established
13 through discovery that he did.

14 Mr. Schraer, Mr. Tigert, and Mr. Trojanowski also failed to respond, because they
15 failed to state the garments that they wore during Mr. Phillips' arrest as requested. Mr.
16 Schraer, Mr. Tigert, and Mr. Trojanowski referred the Plaintiffs' to the police report for
17 the information. However, the police report does not state the garments that Mr. Schraer,
18 Mr. Tigert, and Mr. Trojanowski wore. The Court should compel Mr. Schraer, Mr.
19 Tigert, and Mr. Trojanowski to respond fully and completely to this interrogatory.

20
21
22
23 7. Interrogatory 19

24 This interrogatory states, "[i]dentify all individuals, documents, tapes,
25 memoranda, notes, or other documents or sources of information however recorded that

1 dealt with the investigation of the incident between you and Marques and Cynthia
2 Phillips.” This discovery is not privileged and is relevant to all of Mr. Phillips and Mrs.
3 Phillips’ claim(s).

4 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
5 they failed to state all of the sources of information about Mr. Phillips’ arrest as
6 requested. Mr. Schraer, Mr. Tigert, and Mr. Trojanowski claimed attorney client
7 privilege and attorney work product privilege as justification for their failures. However,
8 Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to state the general nature of the
9 sources of information and why they are subject to the claimed privileges. The Court
10 should compel Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to respond fully and
11 completely to this interrogatory.
12

13 8. Interrogatory 21
14

15 This interrogatory asks, “[h]ave you ever been arrested and/or convicted of any
16 crime whatsoever...” This discovery is not privileged and is relevant to Mr. Phillips and
17 Mrs. Phillips’ claim(s) of negligent selection, training, and retention.

18 However, Mr. Schraer, Mr. Tigert, and Mr. Trojanowski failed to respond, because
19 they voluntarily limited their responses to the time period of January 1, 1999, to March
20 18, 2005. The Court should compel Mr. Schraer, Mr. Tigert, and Mr. Trojanowski to
21 fully and completely respond to this interrogatory.
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1 D. The Court Should Compel Mr. Trojanowski to Admit or Deny the Following
2 Requests.

3 1. Request for Admission 6

4 This request for admission states, “[a]dmit that you knew what Marques Phillips’
5 car looked like because you had it towed on January 31, 2003, and that you knew the car
6 in incident 2 was not Marques Phillips’ vehicle, and that you knew Marques Phillips had
7 nothing to do with marijuana possession or this unoccupied vehicle.” This discovery is
8 not privileged and is relevant to Mr. Phillips and Mrs. Phillips’ claim(s) of unreasonable
9 search and seizure and false arrest and imprisonment.

10 However, Mr. Trojanowski chose not to respond, because this request is a
11 compound request. Mr. Trojanowski could have easily admitted or denied each portion
12 of this request. The Court should compel Mr. Trojanowski to admit or deny each portion
13 of this request.
14

15 2. Request for Admission 9

16 This request states “[a]dmit that you have had many complaints filed against you
17 for assault and battery and excessive use of force by African Americans since you have
18 been employed as a police officer for the City of Fairfield.” This discovery is not
19 privileged and is relevant to Mr. Phillips and Mrs. Phillips’ claim(s) of racial
20 discrimination, negligent selection, training, retention, and discipline.
21

22 However, Mr. Trojanowski objected to this request, because it is “vague” and
23 “seeks information protected by the attorney-client privilege” among other things. If by
24 chance the word “many” rendered this request vague, Mr. Trojanowski is welcomed to
25

1 delete the word from this request and respond appropriately. Mr. Trojanowski's other
2 objections are simply meritless. The Court should compel Mr. Trojanowski to admit or
3 deny this request, if necessary, subject to deletion of the word "many."

4 3. Request for Admission 10

5 This request states, "[a]dmit you were involved in the arrest and use of force
6 against Solomon Kenneyetta Farr on October 3, 2003." This discovery is not privileged
7 and is relevant to Mr. Phillips and Mrs. Phillips' claim(s) of racial discrimination against
8 African Americans by Mr. Trojanowski. The Plaintiffs believe that Mr. Trojanowski
9 arrested Mr. Farr and used excessive force on Mr. Farr, because Mr. Farr is African
10 American.
11

12 However, Mr. Trojanowski objected to this request, because it is "compound and
13 not calculated to lead to the discovery of admissible evidence." Mr. Trojanowski's
14 objections are meritless. The Court should compel Mr. Trojanowski to admit or deny this
15 request or, if necessary, each portion of this request.
16

17 3. Request for Admission 11

18 This requests states, "[a]dmit you were involved in the arrest and use of force
19 against Duran Evans on June 11, 2004, and the harassment of Mr. Evans in another
20 incident a day or two before that." This discovery is not privileged and is relevant to Mr.
21 Phillips and Mrs. Phillips' claim(s) of racial discrimination against African Americans by
22 Mr. Trojanowski. The Plaintiffs believe that Mr. Trojanowski arrested Mr. Evans, used
23 excessive force on Mr. Evans, and harassed Mr. Evans, because Mr. Evans is African
24 American.
25

1 However, Mr. Trojanowski objected to this request, because it is “compound and
2 not calculated to lead to the discovery of admissible evidence.” Mr. Trojanowski’s
3 objections are meritless. The Court should compel Mr. Trojanowski to admit or deny this
4 request or, if necessary, each portion of this request.

5 4. Request for Admission 12

6 This request for admission states, “[a]dmit you [were] involved in the arrest and
7 use of force against Michael Gardner on April 8, 2004.” This discovery is not privileged
8 and is relevant to Mr. Phillips and Mrs. Phillips’ claim(s) of racial discrimination against
9 African Americans by Mr. Trojanowski. The Plaintiffs believe that Mr. Trojanowski
10 arrested Mr. Gardner and used excessive force on Mr. Gardner, because Mr. Gardner is
11 African American.
12

13 However, Mr. Trojanowski objected to this request, because it is “compound and
14 not calculated to lead to the discovery of admissible evidence.” Mr. Trojanowski’s
15 objections are meritless. The Court should compel Mr. Trojanowski to admit or deny this
16 request or, if necessary, each portion of this request.
17

18 E. Reasonable Expenses

19 Under Rule 37(a)(4)(A), “[i]f the motion is granted or if the disclosure or
20 requested discovery is provided after the motion was filed, the court shall, after affording
21 an opportunity to be heard, require the party or deponent whose conduct necessitated the
22 motion or the party or attorney advising such conduct or both of them to pay the moving
23 party the reasonable expenses incurred ...”
24
25

1 Here, Mr. Phillips and Mrs. Phillips' have already incurred \$899.10 in legal fees.
2 These fees include 6.66 hours I spent meeting and conferring with Ms. Colwell and
3 researching and preparing this motion. Mr. Phillips and Mrs. Phillips expect to incur an
4 additional \$675 in legal fees. These additional legal fees include an additional five hours
5 I will spend preparing for and attending arguments on this motion. In all, Mr. Phillips
6 and Mrs. Phillips expect to incur \$1,574.10 in legal fees.
7

8 Therefore, if the motion is granted or the requested discovery is provided after this
9 motion was filed, the Court should require the Defendants, Ms. Colwell, or both to pay
10 Mr. Phillips and Mrs. Phillips' reasonable expenses in the amount of \$1,574.10.

11 **III. CONCLUSION**

12 The Court should compel Mr. Gresham, Mr. Schraer, Mr. Tigert, and Mr.
13 Trojanowski to respond fully and completely to the above discovery requests and also
14 require them, Ms. Colwell, or both to pay Mr. Phillips and Mrs. Phillips' reasonable
15 expenses incurred on this motion in the amount of \$1,574.10.
16

17 Dated: September 8, 2005

18 Respectfully Submitted,

19 /s/ Mister Phillips
20 Mister Phillips
21 Attorney for Plaintiffs
22
23
24
25